

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Warner Bros. Records, Inc.)
 Map 093-13-0, Parcel 166.00) Davidson County
 Commercial Property)
 Tax Years 2005 & 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued as follows:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,702,100	\$2,997,900	\$4,700,000	\$1,880,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on January 17, 2007 in Nashville, Tennessee. In attendance at the hearing were registered agent Michael John and Matt Dobson for the appellant, and Dennis Donovan, MAI for the assessor of property.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a .88 acre parcel improved with an owner-occupied office building constructed in 1994 containing approximately 37,037 square feet of gross building area. Subject property is located at 18 Music Square East in the Music Row area of Nashville.

The taxpayer contended that subject property should be valued at \$3,646,300. In support of this position, the taxpayer placed primary reliance on the income approach. In addition, the taxpayer maintained that the January 6, 2005 sale of the property located at 1 Music Circle North for \$2,865,000 or \$94.55 per square foot supports its contention of value.

The assessor contended that subject property should be valued at \$4,641,800. In support of this position, Mr. Donovan introduced cost and income approaches which he asserted support value indications of \$5,026,086 and \$4,385,700 respectively. Mr. Donovan correlated the indicated values at \$4,641,800 by placing 40% weight on the cost approach and 60% weight on the income approach.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

General appraisal principles require that the market, cost and income approaches to value be used whenever possible. Appraisal Institute, *The Appraisal of Real Estate* at 50 and 62. (12th ed. 2001). However, certain approaches to value may be more meaningful than others with respect to a specific type of property and such is noted in the correlation of value indicators to determine the final value estimate. The value indicators must be judged in three categories: (1) the amount and reliability of the data collected in each approach; (2) the inherent strengths and weaknesses of each approach; and (3) the relevance of each approach to the subject of the appraisal. *Id.* at 597-603.

The value to be determined in the present case is market value. A generally accepted definition of market value for ad valorem tax purposes is that it is the most probable price expressed in terms of money that a property would bring if exposed for sale in the open market in an arm's length transaction between a willing seller and a willing buyer, both of whom are knowledgeable concerning all the uses to which it is adapted and for which it is capable of being used. *Id.* at 21-22.

In view of the definition of market value, the income-producing nature of the subject property and the age of subject property, generally accepted appraising principles would indicate that the market and income approaches have greater relevance and should normally be given greater weight than the cost approach in the correlation of value indicators.

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should be valued at \$3,758,000 after rounding in accordance with the following income approach:

Potential Gross Income (34,814 square feet @ \$17.50)	\$ 609,245
Less Vacancy & Collection Loss (7%)	- \$ 42,647
Effective Gross Income	\$ 566,598
Less Operating Expenses & Reserves (\$6.15/sf)	- 214,106
Net Operating Income (NOI)	\$ 352,492
NOI Capitalized @ 9.38%	÷ .0938
Indicated Value Before Rounding	\$3,757,910

The administrative judge finds that the primary difference between the parties' income approaches concerned potential gross income. Mr. Donovan assumed a market rental rate of \$19.00 per square foot based upon quoted rental rates found in the Grubb & Ellis Nashville Office Market Survey. Mr. Dobson testified he interviewed several management companies that were part of the survey and determined that the actual rents realized were significantly below the quoted rents. The results of Mr. Dobson's findings were summarized in exhibit 7 of the companion appeal *Word Entertainment, LLC* (Davidson Co., Tax Years 2005 & 2006).

The administrative judge finds that the taxpayer's estimate of market rent should receive greatest weight. The administrative judge finds Mr. Donovan's reliance on the

Grubb & Ellis Nashville Office Market Survey an appropriate starting point. However, the administrative judge finds the taxpayer's unrefuted evidence established that the most recently signed leases reflected actual rental rates of \$17.50 per square foot or less.¹ The administrative judge would also observe that Mr. Dobson's analysis was consistent with the testimony offered in other appeals in various jurisdictions concerning quoted versus realized rents in similar surveys.

The administrative judge finds that since both parties utilized a 7% vacancy and collection loss allowance and a loaded capitalization rate of 9.38%, the only remaining difference in their income approaches concerns expenses. The administrative judge finds that Mr. Donovan's proposed expense allowance (including reserves) was initially best substantiated. The administrative judge finds that Mr. Donovan compiled his estimate from the expenses reported by various taxpayers. That information was summarized in exhibit 15 in the *Word Entertainment LLC* appeal. The administrative judge finds the taxpayer, in contrast, relied mostly on hearsay that was not meaningfully summarized. The administrative judge finds that the taxpayer did not introduce anything similar to exhibits 7 or 15. However, the administrative judge finds the taxpayer did introduce evidence to establish that subject property experiences higher than typical expenses because of various amenities not normally found in similar buildings such as a kitchen and entertainment facilities. The administrative judge finds that the preponderance of the evidence supports adoption of operating expenses (including reserves) equal to \$6.15 per square foot of leaseable area of \$214,106.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005 and 2006:

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$1,702,100	\$2,055,900	\$3,758,000	\$1,503,200

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization.

¹ The administrative judge finds that the Roundabout Plaza is not comparable as reflected by its rental rate of \$24.00 per square foot. Thus, \$17.50 per square foot reflects the maximum rate realized by the various properties summarized in exhibit 7 in the *Word Entertainment, LLC* appeal.

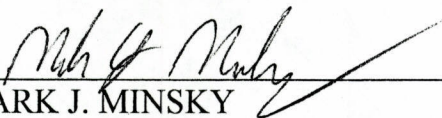
Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”**

Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 1st day of February, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Michael John
Jo Ann North, Assessor of Property